IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/10/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.15585 of 2004
and
WPMP No.18503 of 2004

1. K.Ramakrishnan
2. K.Natarajan
3. S.Subramanian
4. R.Janakiraman
5. M.Seemathan .. Petitioners

-Vs-

1. The Presiding Officer
Industrial Tribunal
Chennai
2. The Management of
W.S. Industries (India) Ltd.,
Porur, Madras 600 116. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the order dated 7.4.2004 passed by the first respondent in Miscellaneous Application No.38 of 2002 in Complaint Nos.14 to 17 and 19/90 in I.D.No.84/89 and to quash the same and consequently direct the second respondent to reinstate the petitioners with continuity of service, backwages and other attendant benefits and Award costs.

!For Petitioners : Mr.D.Hariparanthaman

^For Respondents : Mr.N.Manoharan for R2

:ORDER
The petitioners invoking the writ jurisdiction of this Court, have filed this writ application seeking a writ of certiorarified mandamus to quash an order passed by the Industrial Tribunal, Madras.
2. This Court heard the learned Counsel for the petitioner and also for the second respondent. Affidavit filed in support of the petition is perused and the counter affidavit of the second respondent also. All the materials placed before this Court, are scrutinised.
3. Admittedly, the petitioners before this Court were under the employment of the second respondent management at different posts. In order to obtain a relief under a charter of demands, they moved the Industrial

Tribunal in I.D.No.84/89, and the same was pending adjudication. While so, the petitioners were dismissed from service on 15.11.1 990. They preferred complaints before the Industrial Tribunal stating that the said dismissal was violative of the provisions of Sec.33(2)(b) of the Industrial Disputes Act, since the prior approval was not obtained by the employer pending the proceedings before the Court by way of I.D.No.84/89. These complaints were taken up for enquiry. Both sides were given opportunity to adduce evidence. After recording evidence and hearing the parties, an award was passed in favour of the workers. Aggrieved, the management filed an application for review, and the same was ordered by the Industrial Tribunal, and thereby, the original award passed by the said Court, was set aside. The aggrieved employees brought forth a writ petition before this Court on the earlier occasion, and the award of the Tribunal was set aside, and the matter was remitted back to the Tribunal for fresh enquiry. At that juncture, the instant application was filed before the Tribunal by the employees stating that the matter need not be gone into on the factual position, but simply on the question of law, and hence, dismissal of the employees from service has got to be declared invalid, since it is violative of the mandatory provisions enshrined in Sec.33(2)(b) of the Industrial Disputes Act. The said application was dismissed by the Tribunal. On the dismissal of the same, the employees have brought forth this writ petition.

4. The learned Counsel appearing for the petitioners would submit that the industrial dispute was filed in respect of charter of demands in I.D.No.84/89; that the proceedings were over by passing of the Award only in the year 1993, and thus, during the pendency of the same, without the approval as contemplated under Sec.33(2)(b) of the Act, the dismissal of the employees from service should not be done; but, in the instant case, it has been done by the management in violation of the same, and hence, the order of the Tribunal has got to be set at naught. In support of his contentions, the learned Counsel relied on three decisions, one by the Apex Court reported in (2002) 2 SUPREME COURT CASES 244 (JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. VS. RAM GOPAL SHARMA AND OTHERS) and the other two by this Court reported in 2003(3) LLN 355 (GANAPATHY MILLS COMPANY LTD VS. PESIDING OFFICER, SPECIAL INDUSTRIAL TRIBUNAL AND ANOTHER) and in 2003(4) LLN 117 (C. RAMANUJAM VS. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND ANOTHER).

5. In answer to the above, the learned Counsel for the second respondent would submit that the order of dismissal was valid; that the termination of the petitioners was made on 15.11.1990, pursuant to the settlement that was arrived at in I.D.No.84/89 on 11.10.1990 itself; that a perusal of the complaints made before the Industrial Tribunal, would clearly reveal that it did not contain the necessary averments required for a complaint; that apart from that, in a case like this, the Industrial Tribunal has to necessarily go into and investigate into the matter on the evidence to be adduced by the parties; that on the earlier occasion, this Court in an order passed in the W.P. has set aside the award of the Industrial Tribunal and directed the Tribunal to conduct an enquiry afresh; that under such circumstances, the Tribunal was perfectly correct in rejecting the application, and hence, the order of the Tribunal has got to be sustained.

6. After careful consideration of the rival submissions made, this Court is of the considered view that the order passed by the Industrial Tribunal, has got to be set aside.

7. At the outset, it has to be pointed out that there is no quarrel as to the factual position, as recorded above. It would be more advantageous to reproduce Sec.33(2)(b) of the Industrial Disputes Act, as follows:

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings:-
(1) ....
(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman:-
(a) ....
(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:
Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."
8. Admittedly, the petitioners, who were under the employment of the second respondent management, in view of the charter of demands, filed I.D.No.84/89. It is also not in dispute that they were terminated from service on 15.11.1990. The contention of the second respondent's side that even before the termination of their service on 15.11.19 90, the charter of demands were settled on 11.10.1990, and thus, there was no subsisting industrial dispute between the parties cannot be countenanced in view of Sec.20 of the Industrial Disputes Act. A dispute between the parties under the Industrial Law comes to an end as per the provisions of Sec.20 of the Act, when an award has been passed by the competent authority. In the instant case, it is brought to the notice of the Court that the industrial dispute in I.D.No.84/89 came to an end only in the year 1993, and thus, the industrial dispute between the parties was one subsisting at the relevant point of time, despite the settlement spoken to by the second respondent. The fact that the approval was not obtained is an admitted one. Under such circumstances, the Court has to see strictly the legal position as to the compliance of the provisions of Sec.33(2)(b) of the Act, which are mandatory.
9. In the case reported in (2002) 2 SUPREME COURT CASES 244 (JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. VS. RAM GOPAL SHARMA AND OTHERS), the Supreme Court had an occasion to consider the object of Sec.33 and in particular Sec.33(2)(b) of the Act a he application for approval of the order of discharge or dismissal. A reading of the proviso would make it abundantly clear that it expressly and specifically states that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Further, the proviso would read that the employer, before passing the order of dismissal or discharge, should obtain the prior approval of the authority for the action taken, and further, once it is found to be mandatory provision and if not followed strictly, there cannot be any hesitation for the Court to declare it invalid or void. The law is well settled that non-compliance of the mandatory provisions contained in the proviso to Sec.33(2)(b) would render

the order of dismissal void and the effect of which shall be that the order of dismissal had never been passed and the employee would be deemed to have continued in service.

10. This Court also had an occasion to consider such a situation with analogous facts in C.RAMANUJAM VS. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND ANOTHER (2003(4) LLN 117) and found that the petitioner, an employee, is entitled to succeed at this particular issue alone namely the management did not obtain approval from the competent authority as required under Sec.33(2)(b) of the Industrial Disputes Act, 19 47. In the instant case, it is an admitted position that the management did not obtain the requisite approval, while passing the order of dismissal of the petitioners. In view of the non-compliance of the said mandatory provisions, it can be stated that the order of dismissal has never been passed, and the petitioners would be deemed to have been in service and entitled to all the benefits available to them. Therefore, following the decisions of the Apex Court as well as this Court referred to above, this Court is of the considered opinion that it is a fit case where the writ what is asked for by the petitioner to quash the order of the Industrial Tribunal, has got to be given.

11. In the result, this writ petition is allowed. No costs.

Consequently, connected WPMP is closed.

Index: yes
Internet; yes

To:
The Presiding Officer
Industrial Tribunal
Chennai

nsv/